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STATE INTERFERENCE WITH INTERSTATE COMMERCE.

Congress shall have power "to regulate commerce with foreign nations, and among the several States, and with the Indian Tribes." U. S. Const., art. I, § 8, cl. 3.

The want of this power was one of the leading defects of the Confederation, and probably, as much as any one cause, conduced to the establishment of the Constitution. It was idle and visionary to suppose, that while thirteen independent States possessed the exclusive power of regulating commerce, there could be found any uniformity of system, or any harmony and co-operation for the general welfare. Measures of a commercial nature, which were adopted in one State from a sense of its own interests, would be often countervailed or rejected by other States from similar motives. Each State would legislate according to its estimate of its own business, the importance of its own products, and the local advantages or disadvantages of its position in a political or commercial view. Such a state of things necessarily gave rise to serious dissensions among the States themselves. The difference of regulations was a perpetual source of irritation and jealousy. Those who felt the injury arising from this state of things, and those who were capable of estimating the influence of commerce on the prosperity of nations, perceived the necessity of giving the control over this important subject to the National Government. Brown *v.* Maryland, 12 Wheat. 445; Story on the Const., § 1058.

The word "commerce" not only denotes traffic, but every species of commercial intercourse, including all the means by which it is carried on.

In Gillman *v.* Philadelphia, 3 Wall. 724, the court said: "Commerce includes navigation. The power to regulate commerce comprehends the control for that purpose, and to the extent necessary, of all the navigable waters of the United States which are accessible from a State other than those in which they lie. For

this purpose they are the public property of the nation, and subject to all the requisite legislation by Congress."

To the same effect are Scranton *v.* Wheeler, 16 U. S. App. 192; Gibbons *v.* Ogden, 9 Wheat. 1.

Commerce also includes telegraphic communications. Western Union Tel. Co. *v.* Pendleton, 122 U. S. 347.

Interstate commerce, or commerce "among the several States," the subject with which I am to deal, is commerce which concerns more States than one. It is commerce between two points within different States. The right to regulate interstate commerce is given to the National Government, and the regulation of commerce entirely within the limits of a State is left to the State; but does the mere existence of this power in Congress necessarily exclude the States from all authority whatever, which might affect the commerce falling within the control of Congress? I will attempt to show just how far the States can interfere.

EFFECT OF ACTION BY CONGRESS.

IN GENERAL.—Where Congress has regulated a particular subject of interstate commerce, it thereby in effect declares that no additional or other regulations on the same subject shall be passed by the State, and all other laws on the subject must fail. "This Constitution, and the laws of the United States which shall be made in pursuance thereof, shall be the supreme law of the land." Const., art. VI, cl. 2.

In Gibbons *v.* Ogden, 9 Wheat. 1, the argument was pressed that if a law passed by a State in the exercise of its acknowledged sovereignty comes into conflict with a law passed by Congress in pursuance of the Constitution, they affect the subject and each other like "equal opposing powers." Touching that view, the Chief Justice said: "But the framers of our Constitution foresaw this state of things, and provided for it, by declaring the supremacy not only of itself, but of the laws made in pursuance of it. The nullity of any act, inconsistent with the Constitution, is produced by the declaration that the Constitution is the supreme law. The appropriate application of that part of the clause which confers the same supremacy on laws and treaties, is to such acts of the State legislatures as do not transcend their powers, but, though enacted in the exercise of acknowledged

State powers, interfere with, or are contrary to the laws of Congress, made in pursuance of the Constitution, or some treaty made under the authority of the United States. In every such case, the act of Congress, or the treaty, is supreme; and the law of the State, though enacted in the exercise of powers not controverted, must yield to it." This proposition is well founded and never has been seriously controverted. The decision in this case is followed and reiterated in the following cases: Sinnot *v.* Davenport, 22 How. 227; Wilson *v.* Blackbird Creek Marsh Co., 2 Pet. 245; Gulf, etc., R. Co. *v.* Hefley, 158 U. S. 98; Stockton *v.* Baltimore R. Co., 32 Fed. Rep. 9; Smith *v.* Alabama, 124 U. S. 465; Pembina Consol-Silver Min. Co. *v.* Pennsylvania, 125 U. S. 181.

EFFECT OF NONACTION BY CONGRESS.

(*a*) *Where the Subject Is of a National Character.*

The federal power over commerce is exclusive whenever the subjects are national in their character, or admit only of one uniform system or plan of regulation. Cooley *v.* Board of Wardens, 12 How. 299; Gloucester Ferry Co. *v.* Pennsylvania, 114 U. S. 196; Wabash, etc., R. Co. *v.* Illinois, 118 U. S. 557; Brown *v.* Maryland, 12 Wheat. 419; The Passenger Cases, 7 How. 283; Crandall *v.* Nevada, 6 Wall. 35; Ward *v.* Maryland, 12 Wall. 418; State Freight Tax Cases, 15 Wall. 232; Railroad Co. *v.* Husen, 95 U. S. 465; Robbins *v.* Shelby Taxing District, 120 U. S. 489; Mobile *v.* Kimball, 102 U. S. 691; Henderson *v.* New York, 92 U. S. 259; Welton *v.* Missouri, 91 U. S. 275; Bowman *v.* Chicago, etc., R. Co., 125 U. S. 507.

In Hall *v.* DeCuir, 95 U. S. 485, the court, speaking in reference to the right of the States, in certain classes of interstate commerce, to pass laws regulating them, said: "The line which separates the powers of the States from this exclusive power of Congress is not always distinctly marked, and oftentimes it is not easy to determine on which side a particular case belongs. Judges not unfrequently differ in their reasons for a decision in which they concur. Under such circumstances it would be a useless task to undertake to fix an arbitrary rule by which the line must, in all cases, be located. It is far better to leave a matter of such

delicacy to be settled in each case upon a view of the particular rights involved."

"The question, therefore, may still be considered in each case as it arises, whether the fact that Congress has failed in the particular instance to provide by law a regulation of commerce among the States is conclusive of its intention that the subject shall be free from all positive regulation, or that, until it positively interferes, such commerce may be left to be freely dealt with by the respective States." Bowman *v.* Chicago, etc., R. Co., 125 U. S. 465.

Another established doctrine of the Supreme Court is, that where the power of Congress to regulate commerce is exclusive, i. e., national in its character, the failure of Congress to make express regulations indicates its will that the subject shall be left free from any restrictions or impositions; and any regulation of the subject by the States is repugnant to such freedom. This doctrine was laid down by Mr. Justice Johnson in Gibbons *v.* Ogden, 9 Wheat. 1, by Mr. Justice Grier in the Passenger Cases, 7 How. 283, and has been affirmed in the following cases: State Freight Tax Cases, 15 Wall. 232; Railroad Co. *v.* Husen, 95 U. S. 465; Welton *v.* Missouri, 91 U. S. 275; Mobile *v.* Kimball, 102 U. S. 691; Brown *v.* Houston, 114 U. S. 622; Walling *v.* Michigan, 116 U. S. 446; Wabash, etc., R. Co. *v.* Illinois, 118 U. S. 557; Pickard *v.* Pullman So. Car Co., 117 U. S. 34.

The following State regulations have been held to affect matters national in their character, and requiring uniformity of regulation, and therefore to be invalid, though not in conflict with any regulation prescribed by Congress: A statute of Iowa prohibiting common carriers from bringing intoxicating liquors from any other State or territory without first being furnished a certificate as prescribed in the statute. Bowman *v.* Chicago, etc., R. Co., 125 U. S. 508. A statute of Tennessee exacting the payment of a specific sum per week or month from all persons selling merchandise by sample. Robbins *v.* Shelby Taxing District, 120 U. S. 493. A statute of Pennsylvania taxing the transportation companies on freight hauled through the State. State Freight Tax Cases, 15 Wall. 232. A statute of Florida granting to the Pensacola Telegraph Company the exclusive right of establishing and maintaining electric telegraph lines. Pensacola Tel. Co.

v. Western Union Tel. Co., 96 U. S. 1. A statute of Louisiana requiring all persons engaged in the transportation of passengers among the States to give all persons traveling within the State, upon vessels engaged in such business, equal rights and privileges in all parts of the vessel, without distinction on account of race or color. Hall *v.* DeCuir, 95 U. S. 485. A statute of Michigan which levied a tax upon the gross receipts of railroads for the carriage of freights and passengers into, out of, or through the State. Fargo *v.* Michigan, 121 U. S. 230. A statute attempting to regulate the rates of compensation for transportation of freight from New York to Peoria, Illinois. Wabash, etc., R. Co. *v.* Illinois, 118 U. S. 557. A statute of Tennessee imposing what was called a privilege tax of fifty dollars per annum upon every sleeping car or coach run or used upon a railroad in that State, not owned by the railroad company so running or using it. Pickard *v.* Pullman Car Co., 117 U. S. 34. A tax upon the gross receipts of a steamship company, derived from the transportation of persons and property by sea between different States. Philadelphia S. S. Co. *v.* Pennsylvania, 122 U. S. 326. An Iowa statute having for its purpose the exclusion of liquor from the State or its sale within the State. Leisy *v.* Hardin, 135 U. S. 100. (To avoid the effect of this decision Congress almost immediately passed an act providing that all liquors transported into any State or remaining therein for use should, upon arrival in the State, be subject to its laws as though produced there, and should not be exempt therefrom by reason of being introduced therein in the original package. 26 Stat. at Large 313.) A statute imposing a stamp duty on bills of lading for gold or silver transported from a port within to a port without the State. Almy *v.* California, 24 How. 169.

It is also held, that the mere fact that a State law discriminates against the citizens and products of other States is sufficient to condemn it as an interference with interstate commerce. Woodruff *v.* Parham, 8 Wall. 123; Ward *v.* Maryland, 12 Wall. 163; Welton *v.* Missouri, 91 U. S. 275; Webber *v.* Virginia, 103 U. S. 344; Walling *v.* Michigan, 116 U. S. 446; Minnesota *v.* Barber, 136 U. S. 313.

In Walling *v.* Michigan, 116 U. S. 446, which was a case involving the constitutionality of a statute of Michigan, imposing a

license tax upon persons, not residing or having their principal place of business in that State, but whose business was that of selling or soliciting the sale of intoxicating liquors to be shipped into the State from places without, a similar tax not being imposed in respect to the sale and soliciting for sale of liquors manufactured in Michigan, Mr. Justice Bradley, speaking for the court, said: "A discriminating tax imposed by a State operating to the disadvantage of the products of other States when introduced into the first-mentioned State, is, in effect, a regulation in restraint of commerce among the States, and as such is a usurpation of the power conferred by the Constitution upon the Congress of the United States."

(*b*) *Where the Subject Is of Local Interest.*

IN GENERAL.—Although, as we have seen, the power to regulate interstate commerce is given to Congress, yet this does not deprive the States from all authority which might affect commerce coming within the control of Congress, provided no actual legislation of Congress is interfered with. The cases in which a State can act come within the police power, which extends to the protection of the lives, health, and the property of the community against the injurious exercise by any citizen of his own right.

In Sherlock *v.* Alling, 93 U. S. 99, the court said: "In conferring upon Congress the regulation of commerce, it was never intended to cut the States off from legislating on all subjects relating to the health, life, and the safety of their citizens, though the legislation might indirectly affect the commerce of the country. Legislation, in a great variety of ways, may affect commerce and persons engaged in it without constituting a regulation of it within the meaning of the Constitution * * * and it may be said generally, that the legislation of a State, not directed against commerce or any of its regulations, but relating to the rights, duties and liabilities of citizens, and only indirectly and remotely affecting the operations of commerce, is of obligatory force upon citizens within its territorial jurisdiction, whether on land or water, or engaged in commerce, foreign or interstate, or in any other pursuit."

There have been expressions by individual judges of the Su-

preme Court of the United States that the mere grant of commercial power to Congress is exclusive of all State authority; but there has been no adjudication to that effect. Mobile *v.* Kimball, 102 U. S. 691.

In the case of Gibbons *v.* Ogden, 9 Wheat. 1, the first and leading case upon the construction of the commerce clause of the Constitution, and which opinion was delivered by Chief Justice Marshall, are found several expressions which would indicate that the grant of the commercial power was of itself sufficient to exclude all action by the States; and it is upon these expressions that the advocates of the exclusive theory chiefly rely; and yet the Chief Justice takes care to observe that the question, which these expressions related to, was not involved in the decision required by the case. "In discussing the question whether this power is still in the States," he observes, "in the case under consideration, we may dismiss from it the inquiry, whether it is surrendered by the mere grant to Congress, or is retained until Congress shall exercise the power. We may dismiss that inquiry, because it has been exercised, and the regulations which Congress deemed it proper to make are now in full operation. The sole question is, can a State regulate commerce with foreign nations and among the several States while Congress is regulating it?"

The acts of New York giving to Livingston and Fulton an exclusive right to navigate all the waters within its jurisdiction, with vessels propelled by steam, for a certain period, being in conflict with the laws of Congress regulating the coasting trade, were, therefore, adjudged to be unconstitutional. It determined that the grant of power by the Constitution, accompanied by legislation under it, operated as an inhibition upon the States from interfering with the subject of that legislation.

PARTICULAR INSTANCES.

RIVERS, OBSTRUCTION OF.—While the power to regulate commerce includes the power to regulate navigation, and, as a general rule, any regulation of navigation by a State, which affects interstate commerce, is void; still there are regulations of a local character which a State may lawfully enact and enforce, although they indirectly affect navigation. Thus, there are many cases holding that a State can authorize the construction of bridges

across navigable streams, although they tend to interfere with navigation, unless the authority conflicts with national legislation. The State, in the absence of legislation by Congress, is the sole judge to determine whether commerce is best promoted by a bridge or not. Hamilton *v.* Vicksburg, etc., R. Co., 119 U. S. 280; Escanaba Co. *v.* Chicago, 107 U. S. 678; Albany Bridge Case, 2 Wall. 403; Gilman *v.* Philadelphia, 3 Wall. 713; Veazie *v.* Moor, 14 How. 568; Willamette, etc., Bridge Co. *v.* Hatch, 125 U. S. 1; Wilson *v.* Blackbird Creek Marsh Co., 2 Pet. 250; Cardwell *v.* American Bridge Co., 113 U. S. 205; Huse *v.* Glover, 119 U. S. 543; Miller *v.* New York, 109 U. S. 385.

In Hamilton *v.* Vicksburg, etc., R. Co., 119 U. S. 280, it was said: "Until Congress intervenes in such cases, and exercises its authority, the power of the State is plenary."

"It must not be forgotten that bridges, which are connecting parts of turnpikes, streets and railroads, are means of commercial transportation, as well as navigable waters, and that the commerce which passes over a bridge may be greater than would ever be transported on the water it obstructs. It is for the municipal power to weigh the considerations which belong to the subject, and to decide which shall be preferred, and how far either shall be made subservient to the other. The States have always exercised this power, and from the nature and objects of the two systems of government they must always continue to exercise it, subject, however, in all cases, to the paramount authority of Congress, whenever the power of the States shall be exerted within the sphere of the commercial power which belongs to the nation." Gilman *v.* Philadelphia, 3 Wall. 713.

So also, there are instances where dams across navigable rivers have been upheld as valid. Wilson *v.* Blackbird Creek Marsh Co., 2 Pet. 245; Pound *v.* Turck, 95 U. S. 459; St. Joseph County *v.* Pidge, 5 Ind. 13; Dover *v.* Portsmouth Bridge, 17 N. H. 200.

In Pound *v.* Turck, 95 U. S. 459, it was said: "In order to develop their (navigable streams) greatest utility, it is often essential that such structures as dams, booms, piers, etc., should be used, which are substantial obstructions to general navigation, and more or less so to rafts and barges. But to the legislature of the State may be most appropriately confided the authority to authorize these structures where their use will do more good

than harm, and to impose such limitations and regulations in their construction and use as will best reconcile and accommodate the interest of all concerned in the matter. And since the doctrine we have deduced from the cases recognizes the right of Congress to interfere and control the matter whenever it may deem it necessary to do so, the exercise of this limited power may all the more safely be confided to the local legislature."

RIVERS, IMPROVEMENT OF.

The legislature of a State may authorize the improvement of a navigable river within its limits, and authorize tolls to be collected from all persons using it. Sands *v.* Manistee River Imp. Co., 123 U. S. 288; Withers *v.* Buckley, 20 How. 84; Ruggles *v.* Improvement Co., 123 U. S. 297; Huse *v.* Glover, 119 U. S. 543.

Quoting from this last-named case, it was said: "If, in the opinion of the State, greater benefit would result to her commerce by the improvements made than by leaving the river in its natural state—and on that point the State must necessarily determine for itself—it may authorize them, although increased inconvenience and expense may thereby result to the business of individuals."

Quoting further from the opinion: "How the highways of a State, whether on land or on water, shall be best improved for the public good, is a matter of State determination, subject always to the right of Congress to interfere in the cases mentioned."

PIERS, WHARVES, AND DOCKS, REGULATION OF.

The regulation and erection of wharves, etc., is generally left to the States, although they are related to navigation and commerce, yet being local in their nature they are more properly left to State legislation, in the absence of congressional legislation. Parkersburg, etc., Transp. Co. *v.* Parkersburg, 107 U. S. 691; Cincinnati, etc., Co. *v.* Catlettsburg, 105 U. S. 559; Sweeney *v.* Otis, 37 La. Ann. 520.

COMMON CARRIERS, REGULATION OF.

As the commerce clause includes all the means by which commerce is carried on, it would seem that State regulation of common carriers would be in conflict with the Constitution, but the States may pass statutes for the purpose of facilitating the safe carriage of goods and passengers, such as are not in conflict with

the federal statutes, and may make regulations for the safety and convenience of their citizens. Smith *v.* Alabama, 124 U. S. 465; Nashville, etc., R. Co. *v.* Alabama, 128 U. S. 96; New York, etc., R. Co. *v.* New York, 165 U. S. 628; Stone *v.* Farmers' Loan & Trust, 116 U. S. 317.

A statute of New York, regulating the heating of trains and requiring guards and guard posts to be placed on railroad bridges and trestles, and prohibiting the use of stoves in trains, was held valid and to be a proper police regulation. New York, etc., R. Co. *v.* New York, 165 U. S. 628.

It was argued in this case that the regulation in respect to the heating of passenger cars used in interstate commerce would make safe and rapid transportation impossible; that to stop an express train on its trip from New York to Boston at the Connecticut line in order that passengers may leave the cars heated in a different mode in conformity with the laws of Connecticut, and then at the Massachusetts line to get into cars heated by still another mode as required by the laws of that Commonwealth, would be a hardship on travel that could not be endured. The court answered these arguments by saying: "The possible inconveniences cannot affect the question of the power in each State to make such reasonable regulations for the safety of passengers on interstate trains as in its judgment, all things considered, is appropriate and effective. Inconveniences of this character cannot be avoided so long as each State has plenary power within its territorial limits to provide for the public, according to its own views of necessity and public policy, and so long as Congress deems it wise not to establish regulations on the subject that would displace any inconsistent regulations of the States covering the same ground."

In Smith *v.* Alabama, 124 U. S. 465, the court held, a statute of Alabama, which required locomotive engineers to pass a satisfactory examination designed to test their competency for the duties which their employment devolved upon them, and to pay a reasonable price for the privilege of taking the examination, to be valid as a reasonable exercise of its police power. Also, see in this connection Nashville, etc., R. Co. *v.* Alabama, 128 U. S. 96.

A State statute prohibiting the running of trains on Sunday is not void, although it prevents trains from passing through the

State on Sunday from and to other States, but is a valid exercise of the police power. Hennington *v.* Georgia, 163 U. S. 299; State *v.* Southern R. Co., 119 N. C. 814; Norfolk, etc., R. Co. *v.* Com., 93 Va. 749, overruling Norfolk, etc., R. Co. *v.* Com., 88 Va. 95.

Mr. Justice Lacy delivered a strong dissenting opinion in Norfolk, etc., R. Co. *v.* Com., 88 Va. 95: "Upon this subject of the Sabbath day observance, I have found none but State decisions in a great multitude of cited cases. It does not appear to have ever, so far as my investigation has gone, which has been somewhat limited and not thorough, a matter of decision with the federal courts, so far as the States are concerned. And I believe there is no probability that Congress will ever assume the right to regulate the observance of the Sabbath day in the States. If, however, it should ever do so, I do not doubt that the American Congress will protect the American Sabbath day from unnecessary desecration, by whomsoever it is essayed. Nor do I doubt if the Supreme Court of the United States should have this question under consideration, it would hold, as my view is, that the Sunday laws of this commonwealth are within the police power of the State, and moreover, that they in no wise affect interstate commerce, but being limited in their operations to the State, whatever effect they have upon the through line of transportation outside of the State, it is no more than is proper, and in no way an interference with the granted power of Congress."

Soon after the decision of this case, Hennington *v.* Georgia, 163 U. S. 299, and Norfolk, etc., R. Co. *v.* Com., 93 Va. 749, 24 S. E. 837, were decided and substantially adopted the views expressed in the dissenting opinion of Judge Lacy in Norfolk, etc., R. Co. *v.* Com., 88 Va. 95.

Many other regulations of common carriers by the States have been upheld, though undoubtedly affecting interestate commerce, of which the following are instances: Requiring a limited number of trains to stop at stations. Lake Shore, etc., R. Co. *v.* Ohio, 173 U. S. 285. Requiring all trains to stop at county seats. Gladson *v.* Minnesota, 166 U. S. 427. Regulating the speed of trains in or near cities and towns, or at crossings. Crutcher *v.* Kentucky, 141 U. S. 61. Requiring railroad companies to post a

schedule of rates. Chicago, etc., R. Co. *v.* Fuller, 17 Wall. 560. Compelling railroad companies to draw cars of other roads. Rae *v.* Grand Trunk R. Co., 14 Fed. Rep. 401. Imposing a penalty for refusing to deliver freight. Gulf, etc., R. Co. *v.* Dwyer, 75 Tex. 572. Requiring connecting railroads to transfer freight and passengers. Council Bluffs *v.* Kansas R. Co., 45 Iowa 338.

PILOTS.

The regulation of pilots undoubtedly affects interstate commerce and it is within the power of Congress to assume control over them whenever it deems it necessary, but until Congress shall take exclusive control of the subject by the enactment of a general and uniform law, it is well settled that the States have concurrent power with Congress to pass pilotage laws. The regulations of pilots are local in their character and require different regulations at different ports, and Congress has found it to be advantageous to leave the regulation of them to the States. Ex parte McNiel, 13 Wall. 236; Cooley *v.* Board of Wardens, 12 How. 299; Steamship Co. *v.* Joliffe, 2 Wall. 450; Huus *v.* N. Y. Steamship Co., 182 U. S. 392; The Chase, 14 Fed. Rep. 854.

By Rev. Stat., § 4235, it is expressly enacted: "Until further provision is made by Congress, all pilots in the bays, inlets, rivers, harbors, and ports of the United States shall continue to be regulated in conformity with the existing laws of the States respectively wherein such pilots may be, or with such laws as the States may respectively enact for the purpose."

But a State must not discriminate between vessels from different States. Spraigue *v.* Thompson, 118 U. S. 90.

HEALTH AND QUARANTINE LAWS.

Regulations imposed by a state, for the purpose of protecting the health of its citizens, or to prevent the introduction of diseases from other States or foreign countries, are valid, provided they do not come in conflict with the laws of the general government. The State's action is not necessarily invalid because it may affect interstate commerce. It must not, however, unnecessarily interfere with such commerce, and it cannot, under pretense of adopt-

ing quarantine regulations or health laws, regulate or prohibit commerce in a way, or to an extent, not required for the preservation or promotion of the public health. License Cases, 5 How. 504; Railroad Co. *v.* Husen, 95 U. S. 465; Morgan S. S. Co. *v.* La., 118 U. S. 455; Gillman *v.* Philadelphia, 3 Wall. 713; Minneapolis *v.* Milner, 57 Fed. Rep. 276.

The following State regulations have been held valid as a reasonable exercise of the police power: Authorizing the construction of a dam across a navigable stream, so as to exclude water from a marsh that the health of the inhabitants might probably be improved. Wilson *v.* Blackbird Creek Marsh Co., 2 Pet. 245. Directing that passenger cars should not be heated by stoves. New York, etc., R. Co. *v.* New York, 165 U. S. 628. Requiring locomotive engineers to be examined and licensed. Smith *v.* Alabama, 124 U. S. 465. Making any person who has Texas cattle, infected with a contagious disease, which have not been wintered north of a certain line, liable for all damages caused by them to other cattle. Kimmish *v.* Ball, 129 U. S. 217. Requiring every master of a vessel arriving from a foreign port to report the names of all his passengers, their age, occupation, etc. New York *v.* Miln, 11 Pet. 102. Requiring the examination of all vessels passing a certain quarantine station. Morgan, etc., Co. *v.* Louisiana, etc., Board of Health, 118 U. S. 455. Prohibiting a dangerous business, as the sale of opium, or the regulation of the sale of any commodity, the use of which would be detrimental to the morals of the people. Kirby *v.* Pennsylvania R. Co., 76 Penn. 506; People *v.* Hawley, 3 Mich. 330; State *v.* Gurney, 37 Me. 156.

THE POWER TO REGULATE OR PROHIBIT THE MANUFACTURE OR SALE OF ARTICLES.

It is a recognized principle that a citizen has the right to engage in any lawful calling that he chooses, and to dispose of his property as he sees fit, provided he does not inflict any injuries upon others. But it is no less a settled principle that a State may. in the exercise of its police power, pass laws for the regulation or prohibition of any trade or business that may be injurious to the safety or well-being of society. Slaughter House Cases,

16 Wall. 36; Stone *v.* Miss., 101 U. S. 814; Patterson *v.* Kentucky, 97 U. S. 501.

For a general discussion of the power of a State to regulate the introduction and sale, within its limits, of intoxicating liquor, see Leisy *v.* Hardin, 135 U. S. 100. The decision in this case has been abrogated by an act of Congress, which provides that all liquors transported into any State or remaining therein for use should, upon arrival in the State, be subject to its laws as though produced there, and should not be exempt therefrom by reason of being introduced therein in the original package. 26 Stat. at Large 313.

Although, after the passage of this act, the dispensary law of South Carolina was held invalid in so far as it forbade private persons from bringing in for their own use liquor from other States. Vance *v.* Vandercook Co., 170 U. S. 438.

Oleomargarine is a lawful article of commerce and a State cannot exclude its introduction or prohibit its sale in the original package. Schollenberger *v.* Pennsylvania, 171 U. S. 1; Collins *v.* New Hampshire, 171 U. S. 30.

But a State can prohibit its sale as an imitation of butter. Plumley *v.* Massachusetts, 155 U. S. 461; Collins *v.* New Hampshire, 171 U. S. 30.

In Plumley *v.* Massachusetts, 155 U. S. 461, the coart said: "And yet it is supposed that the owners of a compound which has been put in a condition to cheat the public into believing that it is a particular article of food in daily use, and largely sought by people in every condition of life, are protected by the Constitution in making a sale of it against the will of the State in which it is offered for sale, because of the circumstance that it is an original package, and has become the subject of ordinary traffic. We are unwilling to accept this view. We are of the opinion that it is within the power of a State to exclude from its markets any compound manufactured in another State, which has been artificially colored or adulterated so as to cause it to look like an article of food in general use, and the sale of which may, by reason of such coloration or adulteration, cheat the general public into purchasing that which they may not intend to buy. The constitution of the United States does not secure to anyone the privilege of defrauding the public."

The above quotation applies equally as well to all food products. Articles which would spread disease or pestilence, such as substances infected with disease germs, and meat or other provisions unfit for human use, are not legitimate subjects of trade and commerce, and are not within the protection of the commerce clause of the constitution, but are within the police power of the States. Bowman *v.* Chicago, etc., R. Co., 125 U. S. 489; In re Rahrer, 140 U. S. 545; License Cases, 5 How., 576.

Congress has the power to decide what shall and what shall not be articles of traffic in the interstate commerce of the country. Bowman *v.* Chicago, etc., R. Co., 125 U. S. 493; In re Rahrer, 140 U. S. 545; Sawrie *v.* Tennessee, 82 Fed. Rep. 615.

It has been held, that, in the absence of congressional legislation upon the subject, the States may determine the question for themselves. Com. *v.* Paul, 9 Pa. Co. Ct. 196.

Com. *v.* Paul, *supra,* was a county court case and cannot be considered an authority for the above proposition.

Of course when goods become incorporated with State property, or the original package has been broken, they become subject to the power of the State and Congress has nothing more to do with them. Leisy *v.* Hardin, 135 U. S. 100; Lyng *v.* Michigan, 135 U. S. 161.

As to what constitutes original packages, see Austin *v.* Tennessee, 179 U. S. 343; Cook *v.* Pennsylvania, 97 U. S. 566; Low *v.* Austin, 13 Wall. 29; In re Reine, 42 Fed. Rep. 545.

As to when goods become incorporated with State property, see Welton *v.* Missouri, 91 U. S. 275; May *v.* New Orleans, 178 U. S. 496; In re Wilson, 12 L. R. A. 624.

TAXES AND LICENSES.

Article 1, § 10, of the Constitution of the United States, is an exception on the power of the States to levy taxes. The prohibition is general, and reaches a tax on the sale of the article imported, and on the occupation of the importer. Brown *v.* Maryland, 12 Wheat. 419; State *v.* North, 27 Mo. 464.

While the imported goods remain the property of the importer in the original form or package, a tax on it is void. Murray *v.* Charleston, 96 U. S. 447; State Tax on Railway Gross Receipts, 15 Wall. 284; Low *v.* Austin, 13 Wall. 29.

A tax on the sales of imported merchandise in its original

packages by brokers and auctioneers is unconstitutional. Cook *v.* Penn., 97 U. S. 566.

A State law requiring importers to take out a license to sell imported goods is an indirect tax on imports and therefore void. Brown *v.* Maryland, 12 Wheat. 419; The License Cases, 5 How. 504; Pervear *v.* Com., 5 Wall. 478; Waring *v.* Mobile, 8 Wall. 110.

A State statute requiring an importer of merchandise to obtain a license for the privilege of selling his imported goods is unconstitutional and void. New York *v.* Miln, 11 Pet. 160; Almy *v.* Cal., 24 How. 173; Gilman *v.* Phila., 3 Wall. 713; Crandall *v.* Nevada, 6 Wall. 47; Ward *v.* Maryland, 12 Wall. 419; Welton *v.* Missouri, 91 U. S. 278; Cook *v.* Penn., 97 U. S. 573.

For a further discussion of the power of a State to tax commerce among the States, see the above cases.

Any license tax which discriminates between the products or manufactures of different States, or gives a citizen or resident of the State a right to carry on commerce on more favorable terms than are accorded to citizens of other States, cannot be sustained. Welton *v.* Missouri, 91 U. S. 275; Walling *v.* Michigan, 116 U. S. 446; Ward *v.* Maryland, 12 Wall. 418.

A license tax may be imposed upon all peddlers, or upon peddlers of a particular class of goods, and when imposed, no peddler can escape from its payment on the ground that the articles he happens to sell were wholly or partly manufactured or produced in another state. State *v.* Emert, 103 Mo. 241; State *v.* Smithson, 106 Mo. 140; Ex parte Butin, 28 Tex. App. 304.

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